

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #16	CCRB Case #: 201609849	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/20/2016 11:15 AM	Location of Incident: § 87(2)(b)	Precinct: 46	18 Mo. SOL 5/20/2018	EO SOL 5/20/2018	
Date/Time CV Reported Tue, 11/22/2016 11:18 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/29/2016 11:37 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Accomando	08316	949957	046 PCT
2. POM Tyrone Seely	07393	951231	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Tyrone Seely	Abuse: At § 87(2)(b) in the Bronx, Police Officer Tyrone Seely questioned § 87(2)(b)	§ 87(2)(b)
B.POM Thomas Accomando	Abuse: At § 87(2)(b) in the Bronx, Police Officer Thomas Accomando questioned § 87(2)(b)	§ 87(2)(b)
C.POM Tyrone Seely	Abuse: Police Officer Tyrone Seely entered and searched § 87(2)(b), in the Bronx.	§ 87(2)(b)
D.POM Thomas Accomando	Abuse: At § 87(2)(b) in the Bronx, Police Officer Thomas Accomando stopped § 87(2)(b)	§ 87(2)(b)
E.POM Thomas Accomando	Force: At § 87(2)(b) in the Bronx, Police Officer Thomas Accomando used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Thomas Accomando	Abuse: At § 87(2)(b) in the Bronx, Police Officer Thomas Accomando searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)

## Case Summary

On November 22, 2016, § 87(2)(b) filed this complaint with IAB via telephone on behalf of himself and his girlfriend, § 87(2)(b). On November 29, 2016, the complaint was forwarded to the CCRB via IAB log #2016-41512.

At approximately 11:15 a.m. on November 20, 2016, § 87(2)(b) an off-duty correction officer, informed PO Thomas Accomando and PO Tyrone Seely of the 46<sup>th</sup> Precinct of a Honda sedan that had been parked in front of a fire hydrant for several days in front of § 87(2)(b) in the Bronx. When PO Accomando and PO Seely traveled to the location, they found that the Honda was parked in front of a hydrant as described. The Honda's side windows and rear windshield were also tinted. A yellow NYPD traffic vest was also visible inside of the Honda. The officers noted that it is illegal for non-NYPD personnel to display such a vest. When the officers ran the vehicle's license plate to identify its owner, they found that it was registered to § 87(2)(b) who lived at § 87(2)(b), in the Bronx.

PO Accomando and PO Seely drove to § 87(2)(b)'s apartment and knocked on her door. When she answered, the officers asked her to identify herself, and asked her if she was the owner of the Honda. When she confirmed her name and that she was the registered owner of the Honda, the officers asked her to provide identification. They also asked her to step into the hallway to speak with them outside of the apartment (**Allegations A and B**). § 87(2)(b) declined to leave the apartment, and did not immediately provide identification. § 87(2)(b) then came to the door to ask why the officers were there. PO Seely placed his foot in the frame of the door, positioned in such a way to prevent the civilians from closing the door (**Allegation C**). When § 87(2)(b) asked PO Seely to remove his foot, PO Seely refused to do so.

§ 87(2)(b) left the apartment in order to go move the Honda. The officers initially remained at the apartment with § 87(2)(b) but later followed him back to § 87(2)(b). There, PO Accomando asked § 87(2)(b) to provide identification. § 87(2)(b) asked why PO Accomando needed his identification. PO Accomando then pushed § 87(2)(b) face-first against the side of the Honda and placed him in handcuffs (**Allegations D and E**). PO Accomando removed the Honda's keys from § 87(2)(b)'s pocket and entered the car to remove the vest (**Allegation F**).

§ 87(2)(b) walked to § 87(2)(b) separately, arriving after § 87(2)(b) was arrested. PO Accomando issued her a parking summons for blocking the fire hydrant. A tow truck was called to the location in order to remove the Honda. § 87(2)(b) was also removed from the location to the 46<sup>th</sup> Precinct stationhouse. There, he was issued five summonses by PO Accomando. Four were for have improperly tinted windows, and one was for § 87(2)(a) 160.50 § 87(2)(b). He was then released from custody.

This case has video evidence which has been placed below. Due to its length, it has been attached in its entirety. § 87(2)(b) provided cell phone footage of the incident taken by a pedestrian bystander to IAB. IAB in turn forwarded the footage to the CCRB. None of the allegations were captured on the video (See Board Review #01: Video Footage).



## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

- While § 87(2)(b) stated that PO Accomando placed his foot in the frame of his apartment door, § 87(2)(b) PO Accomando and PO Seely all indicated that PO Seely was the officer who put his foot in the door frame. § 87(2)(g) .

### **Allegations Not Pleaded**

- **Abuse of Authority – Search:** § 87(2)(b) alleged that after he was placed in handcuffs, PO Accomando reached into his pockets and retrieved the keys to the Honda. He was subsequently placed in the back seat of PO Accomando’s marked vehicle. § 87(2)(g) .

**Allegation A – Abuse of Authority: At § 87(2)(b), in the Bronx, Police Officer Tyrone Seely questioned § 87(2)(b)**

**Allegation B –Abuse of Authority: At § 87(2)(b), in the Bronx, Police Officer Thomas Accomando questioned § 87(2)(b)**

It is undisputed that the Honda that was parked at § 87(2)(b) is registered to § 87(2)(b) who resides at § 87(2)(b). At the time of the incident, the Honda was parked illegally in front of a fire hydrant, and had darkly tinted windows. An NYPD traffic vest belonging to § 87(2)(b)’s brother-in-law was also somewhere inside of the vehicle. § 87(2)(b) was subsequently issued a summons for parking the Honda in front of a fire hydrant. § 87(2)(b) was subsequently issued summonses for the Honda’s tinted windows and the § 87(2)(a) 160.50 .

It is also undisputed that PO Accomando and PO Seely traveled to § 87(2)(b)’s apartment after identifying her as the vehicle’s registered owner. Once there, the officers asked § 87(2)(b) to confirm her name and ownership of the Honda. The officers also asked § 87(2)(b) to produce her driver’s license.

§ 87(2)(b) was interviewed at the CCRB on December 8, 2016 (See Board Review: #06 § 87(2)(b)’s Statement). § 87(2)(b) was interviewed via telephone on December 16, 2016 (See Board Review #07: § 87(2)(b)’s Statement). Both civilians confirmed that the officers questioned § 87(2)(b) about her ownership of the Honda. Neither made any mention of the officers asking any questions about the vest when they came to the apartment.

PO Accomando was interviewed at the CCRB on December 22, 2016 (See Board Review #08: PO Accomando’s Statement). PO Seely was interviewed at the CCRB on January 5, 2016 (See Board Review #09: PO Seely’s Statement). Both officers stated that they went to § 87(2)(b)’s apartment in order to determine if she was in fact the registered owner of the vehicle. They also

went to find out why there was an NYPD traffic vest inside of her vehicle. The officers explained that it is illegal for non-NYPD personnel to possess or display the NYPD logo.

An officer may ask pointed or accusatory questions of a civilian when they possess a founded suspicion that criminal activity is afoot. People v. DeBour, 40 N.Y.2d 210 (1976) (See Board Review #10: Legal Reference).

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation C – Abuse of Authority: Police Officer Tyrone Seely entered and searched § 87(2)(b), in the Bronx.**

It is undisputed that PO Seely placed his foot inside of the door frame of § 87(2)(b). Though the apartment’s occupants did not attempt to close the door, PO Seely’s foot was positioned in such a way that it would have prevented the occupants from fully closing the door.

PO Seely explained that he placed his foot in the door because he had positioned his hand near the door’s hinge. PO Seely was concerned that if either occupant attempted to close the door, then his hand may have been injured. He therefore placed his foot in the door to prevent the occupants from potentially injuring his hand.

Both § 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) asked PO Seely to move his foot from the door, but that PO Seely refused to do so. Both PO Seely and PO Accomando denied that either occupant asked PO Seely to move the foot.

Absent exigent circumstances, an officer may not enter a private residence unless he or she possesses a valid warrant. An officer who places a limb or extremity through the threshold of a door is considered to have entered the premises. People v. Reese, 5 Misc. 3d 1030(A) (Dist. Ct., Suffolk Co. 2004) (See Board Review #11: Legal Reference).

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation D – Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Thomas Accomando stopped § 87(2)(b)**

It is undisputed that the Honda was parked in front of a fire hydrant, that its side windows were tinted, and that it contained an NYPD traffic vest. The vest did not belong to § 87(2)(b) or § 87(2)(b). Neither § 87(2)(b) nor § 87(2)(b) is a police officer or traffic agent, or otherwise affiliated with the NYPD.

It is undisputed that as the officers spoke to § 87(2)(b) at the apartment, § 87(2)(b) identified himself as the co-owner of the vehicle. § 87(2)(b) later left the apartment by himself and walked to where the Honda was parked on Montgomery Avenue. Once he was there, PO Accomando approached § 87(2)(b) and asked him for identification. When § 87(2)(b) refused to provide his identification to PO Accomando, PO Accomando placed him in handcuffs.

Neither § 87(2)(b) nor § 87(2)(b) made any mention of the officers asking them about the vest in the Honda during the conversation at the apartment. Both stated that PO Accomando followed § 87(2)(b) when he left, while PO Seely stayed at the apartment. While § 87(2)(b) denied that § 87(2)(b) told the officers where he was going when he left, § 87(2)(b) stated that he told the officers that he was going to move the vehicle. When § 87(2)(b) left the building and walked to where the Honda was parked at § 87(2)(b), PO Accomando followed him, leaving PO Seely and § 87(2)(b) at the apartment. When § 87(2)(b) approached the Honda, he noted that there was a marked police car parked on the street nearby. He also saw § 87(2)(b) standing nearby on the sidewalk. § 87(2)(b) denied speaking to § 87(2)(b). Once § 87(2)(b) reached the Honda, he examined the windshield to see if any summonses had been placed there. PO Accomando then told him, “Let me see your ID.” § 87(2)(b) initially ignored this request. When PO Accomando repeated it, § 87(2)(b) told him that there was no reason for him to provide identification, as the officers had initially gone to the apartment to find § 87(2)(b). PO Accomando then grabbed § 87(2)(b) by the back of the shirt and pushed him against the side of the Honda. He then handcuffed § 87(2)(b).

§ 87(2)(b) provided a telephone statement on December 13, 2016 (See Board Review #12: § 87(2)(b)'s Statement). § 87(2)(b) resides at § 87(2)(b), and had seen the Honda parked in front of the fire hydrant on numerous occasions. At the time of the incident, he observed § 87(2)(b) get into the Honda, turn on the engine, and attempt to pull the car away from the fire hydrant. Nobody else was in the vehicle with him. § 87(2)(b) observed this interaction from the sidewalk. § 87(2)(b) was stopped when PO Accomando's and PO Seely's marked police car pulled in front of the Honda, blocking its path. § 87(2)(b) PO Accomando and PO Seely all exited their vehicles. The two officers asked § 87(2)(b) to produce his license and registration. § 87(2)(b) refused to do so. He started shouting at both the officers, and called § 87(2)(b) a “bitch-ass nigger.” PO Accomando then placed § 87(2)(b) under arrest by moving him against the side of the Honda and placing him in handcuffs.

As mentioned earlier, both PO Accomando and PO Seely stated that they went to § 87(2)(b)'s apartment to confirm that she was the Honda's owner, and to determine why the NYPD traffic vest was inside of the vehicle. PO Accomando stated that he had asked § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) about the vest at the apartment, and that § 87(2)(b) had claimed that somebody had given her the vest. PO Accomando, however, was unable to understand what she was saying, as she and § 87(2)(b) were shouting over each other at the time. He did not recall learning who had given her the vest. § 87(2)(b) later left the apartment without stating where he was going. PO Accomando did not follow § 87(2)(b) but assumed that he was going to move the Honda. PO Accomando and PO Seely later left the apartment after they realized that § 87(2)(b) was not going to cooperate with them. They then drove their marked car to § 87(2)(b). When they arrived, they found that an individual had gotten into the Honda's driver's seat and was trying to drive away. The officers initiated a vehicle stop by pulling their vehicle in front of the Honda, blocking its path. PO Accomando explained that they stopped the Honda because they wanted to issue citations to the vehicle for the improper display of the NYPD vest, as well as its tinted windows. PO Accomando was initially unable to see who was in the vehicle due to the Honda's tinted windows. When the driver refused to leave the vehicle, PO Accomando opened the door, finding § 87(2)(b) sitting in the driver's seat.

While PO Seely also indicated that § 87(2)(b) was inside of the Honda when he and PO Accomando returned to § 87(2)(b), he did not recall if the engine was on. He did not make any mention of § 87(2)(b) driving the vehicle, or of the officers' vehicle blocking § 87(2)(b) in. PO Accomando immediately walked up to the driver's seat and ordered § 87(2)(b) to step out of the vehicle. PO Seely did not know why PO Accomando ordered § 87(2)(b) out of the vehicle.

An officer may stop a vehicle and its occupants based upon a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime. People v. Taylor, 31 A.D.3d 1141 (App. Term, 4<sup>th</sup> Dept., 2006). An officer may also stop a vehicle based upon probable cause that the driver has committed a traffic violation. People v. Robinson, 97 N.Y.2d 341 (2001) (See Board Review #13-14: Legal Reference).

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**Allegation E – Force: At § 87(2)(b) in the Bronx, Police Officer Thomas Accomando used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Accomando approached him outside of the Honda and demanded to see his identification. § 87(2)(b) told PO Accomando that there was no reason for him to provide his identification. PO Accomando then grabbed the back of § 87(2)(b)'s shirt and pushed him front-first against the rear of the Honda. § 87(2)(b) did not offer any resistance to PO Accomando. He denied making any kind of movement when PO Accomando grabbed his shirt. PO Accomando pulled § 87(2)(b)'s arms behind his back and placed him in handcuffs.

§ 87(2)(b) felt pain in his right shoulder while being held against the Honda, but denied sustaining any injuries.

§ 87(2)(b) stated that after PO Accomando and PO Seely pulled up to block § 87(2)(b) from driving away, the officer spoke to § 87(2)(b) next to the Honda. § 87(2)(b) was shouting at both the officers and § 87(2)(b). He refused to provide his identification when asked. PO Accomando then grabbed § 87(2)(b)'s hands, and placed both hands to the hood of the Honda. § 87(2)(b) denied that PO Accomando pushed or shoved § 87(2)(b) or used any force to move him to towards the Honda. § 87(2)(b) was placed in handcuffs without incident.

PO Accomando denied pushing § 87(2)(b) at any point. He stated that after he stopped § 87(2)(b) he intended to issue summonses for the Honda's various violations. Since § 87(2)(b) refused to provide identification, he moved to place § 87(2)(b) under arrest instead. § 87(2)(b) offered no resistance, and took no action to prevent PO Accomando from doing so. PO Accomando denied pushing or holding § 87(2)(b) against the Honda. He denied that any force was used against § 87(2)(b).

PO Seely did not know why PO Accomando moved to handcuff § 87(2)(b). § 87(2)(b) placed both of his hands on top of the Honda when he exited the car, but PO Seely denied that he or PO Accomando was pushed or held against the Honda. He denied that any force was used against § 87(2)(b).

§ 87(2)(g)

**Allegation F – Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Thomas Accomando searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

§ 87(2)(b) alleged that after he was handcuffed and placed in the officer's vehicle, PO Accomando used his key fob to unlock the Honda. He then leaned into the driver's seat to turn the engine on and roll down the windows. PO Accomando then reached his arm into the vehicle's interior. § 87(2)(b) was unable to see what PO Accomando did inside of the Honda, or what parts of the vehicle he reached into. PO Accomando removed the vest from the Honda. § 87(2)(b) did not see PO Accomando remove any other items from the Honda. PO Accomando then rolled the Honda's windows back up.

§ 87(2)(b) confirmed that after § 87(2)(b) was arrested, PO Accomando entered the Honda to retrieve the vest. He denied that any additional search of the vehicle was conducted. He made no mention of any officer rolling down the Honda's windows or checking the tints on its windows.



§ 87(2)(b) arrived at § 87(2)(b) after § 87(2)(b)'s arrest. When she got there, she found PO Accomando leaning into the Honda's driver's seat. PO Accomando turned on the Honda's engine and rolled down its windows. He applied a tint checker to the Honda's windows. He then removed the vest from the Honda. No other items were removed from the vehicle. PO Accomando rolled the windows back up, turned the engine off, and shut the Honda's doors.

PO Accomando stated that when he first approached § 87(2)(b) in the Honda, he was unable to see inside of the vehicle due to the vehicle's tinted windows. He told § 87(2)(b) several times to exit the vehicle. § 87(2)(b) ignored PO Accomando's instructions. PO Accomando then opened the driver's door, finding § 87(2)(b) sitting in the driver's seat with both hands held in front of his torso. After PO Accomando arrested § 87(2)(b) he returned to the Honda to search the interior. He explained that he suspected that § 87(2)(b) had initially refused to open his door and exit his vehicle because he was concealing "something" in his vehicle. PO Accomando did not articulate what, specifically, he suspected that § 87(2)(b) was concealing in the vehicle. When asked if thought that § 87(2)(b) had a weapon with him, PO Accomando stated that it was "unclear" if § 87(2)(b) was armed or not. PO Accomando searched the areas around the driver's seat, including underneath the two front seats. He also opened the center console. He explained that he searched those specific areas because they would have been within reach of § 87(2)(b)'s position in the driver's seat. PO Accomando did not find anything during this search. After completing the search, he removed the vest from the Honda's dashboard. He also applied a tint checker to the Honda's side windows. Since the tint checker must be applied to both sides of the windows, he rolled the windows down in order to obtain access to them. No further search was conducted in the vehicle.

PO Seely denied that any officer searched the Honda after § 87(2)(b)'s arrest. He was not aware of any officer entering the vehicle or removing any items from it, including the vest. He did not recall himself or any officer turning the car's engine on or off, or rolling its windows up or down. While PO Seely did not recall any tint checkers being used on the Honda's windows, he confirmed that tint checkers must be applied to both sides of the windows.

An officer may conduct an inventory search of an impounded vehicle without a warrant, provided that the search is conducted according to a 'single familiar standard' or procedure established by the police agency. Such a procedure must include the creation of a usable inventory detailing the property that is seized by the police. People v. Galak, 80 N.Y.2d 715 (1993). An inventory search is not invalid merely because incriminating evidence is recovered, so long as that was not the primary purpose of the search. People v. Lee, 143 A.D.3d 626 (App. Term, 1<sup>st</sup> Dept., 2016)

An officer may conduct a warrantless search of a motor vehicle after making a valid arrest for a crime when the circumstances give reason to believe that the vehicle or its visible contents may be related to the crime for which the arrest is being made. People v. Belton, 55 N.Y.2d 49 (1982). A valid arrest for a crime authorizes a warrantless search of a vehicle, and of any closed containers visible in the passenger compartment of the vehicle, in which the arrested person is travelling when the circumstances create a reasonable belief that the vehicle or its visible contents may be related to a crime or the commission thereof. People v. Yancy, 86 N.Y.2d 239 (1995). (See Board Review #15-18: Legal Reference).

It is undisputed that an NYPD traffic vest was present in the Honda, and that neither § 87(2)(b) nor § 87(2)(b) identified themselves to the officers as being authorized to possess the vest. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date